

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

DIVANNA ALTAGRACIA NUNEZ
RODRIGUEZ-JIMENEZ MENCIA,

Civil Action: 1:23-cv-05571

Petitioner,

-against-

LUIS CLEY PORTES PAREDES,

Respondent.

-----X

**RESPONDENT’S ANSWER TO PETITION FOR RETURN OF CHILD TO
PETITIONER**

Respondent, LUIS CLEY PORTES PAREDES (“Respondent”) through his undersigned attorneys Dawud A. Nelson, responds to the Petition for Return of Child to Petitioner (the “Petition”) herein as follows:

GENERAL RESPONSES TO PETITIONER’S ALLEGATIONS

The Petition improperly mixes multiple factual averments together in each paragraph and/or mixes factual averments together with legal argument and rhetoric such that admissions or denials of specific factual averments are difficult or impossible to make. Moreover, many of the allegations in the Petition are overbroad, vague, or conclusory. All responses herein are provided based on information reasonably available to Respondent, counsel’s investigation of reasonably available information, and/or upon information and belief. Any admission as to any allegation or set of allegations does not constitute an admission that Respondent had knowledge or information concerning the facts alleged at any time prior to the filing of the Petition unless explicitly admitted herein.

By referring to or admitting the existence of any documents quoted, described, or otherwise referenced in the Petition, Respondent does not acknowledge or concede that such documents are what they purport to be, are accurate as to their substance, constitute business or personal records within the meaning of the Federal Rules of Evidence, or are otherwise admissible on any other basis, unless specifically stated so herein.

By referring to or admitting the existence of any document quoted, described, or otherwise referenced in the Petition, Respondent does not acknowledge or concede that Respondent has any knowledge or information concerning the document quoted, described, or otherwise referenced at any point in time prior to the filing of the Petition, unless explicitly admitted herein.

These comments and objections are incorporated, to the extent applicable, into each numbered paragraph of this Response. For the avoidance of doubt, all allegations in the Petition are denied unless specifically admitted and any factual averment admitted is admitted only as to the specific facts and not as to any conclusions, characterizations, implications, or the like which are contained in the averment or in the Petition as a whole. All headings, subheadings, and other statements made by Petitioner that are not designated by a numbered paragraph are hereby expressly denied.

All averments herein are not intended to be comprehensive but are merely examples, and the failure to include averments or any averment in response to allegations does not mean that such averments or other facts do not apply to rebut those allegations.

Respondent reserves the right to further amend his responses and averments at a later date.

IN ANSWER TO THE SECTION TITLED “INTRODUCTION”

1. Paragraph “1” contains a legal conclusion to which no response is required.
2. Paragraph “2” contains a legal conclusion to which no response is required.

IN ANSWER TO THE SECTION TITLED “JURISDICTION AND VENUE”

3. Paragraph “3” contains a statement of jurisdiction and legal conclusions to which no response is required.
4. Regarding the allegations contained in paragraph "4" of the Petition, Respondent admits that Respondent resides in this District. Respondent denies the allegation that Respondent is wrongfully detaining the child.
5. Regarding the allegations contained in paragraph "5" of the Petition, Respondent admits that Respondent resides in this District.

IN ANSWER TO THE SECTION TITLED “STATUS OF PETITIONER AND CHILD”

6. Regarding the allegations contained in paragraph "6" of the Petition, Respondent specifically admits that: Respondent and Petitioner are the parents of the child; Respondent and Petitioner were never married and that the Child is six years old. The rest of the allegations contained in paragraph “6” contain legal conclusions to which no response is required.
7. Regarding the allegations contained in paragraph "7" of the Petition, Respondent specifically admits that: the Child was born in Switzerland and resided in Switzerland with the Petitioner. Respondent denies the allegation that the Child is wrongfully retained in the United States and denies all other allegations in paragraph "7" of the Petition.
8. Respondent lacks knowledge or information sufficient to form a response to the allegations set forth in Paragraph “8” of the Petition.

9. Regarding the allegations contained in paragraph "9" of the Petition, Respondent specifically admits that he resides at 3913 Rombouts Avenue, Bronx, New York 10466. Respondent denies the allegation that the Child is wrongfully retained and denies all other allegations in paragraph "9" of the Petition.
10. Respondent lacks knowledge or information sufficient to form a response to the allegations set forth in Paragraph "10" of the Petition.
11. Respondent denies all allegations in paragraph "11" of the Petition.
12. Respondent admits the allegations contained in paragraph "12" of the Petition.
13. Regarding the allegations contained in paragraph "13" of the Petition, Respondent admits that the Child is enrolled in school and attends the Our Lady of Refuge School in Bronx, New York.
14. Respondent lacks knowledge or information sufficient to form a response to the allegations set forth in Paragraph "14" of the Petition.

**IN ANSWER TO THE SECTION TITLED "COUNT I-WRONGFUL
RETENTION OF CHILD UNDER THE CONVENTION AND THE ACT"**

15. Respondent denies all allegations in paragraph "15" of the Petition.
16. Respondent admits the allegation contained in paragraph "16" of the Petition.
17. Regarding the allegations contained in paragraph "17" of the Petition, Respondent specifically admits that: the Child was born in Switzerland and resided in Switzerland at one point. Respondent denies all other allegations in paragraph "17" of the Petition.
18. Respondent denies all allegations in paragraph "15" of the Petition.
19. Respondent denies all allegations in paragraph "19" of the Petition.
20. Paragraph "20" contains legal conclusions to which no response is required.
21. Respondent denies all allegations in paragraph "21" of the Petition.

22. Respondent denies all allegations in paragraph "22" of the Petition.
23. Respondent denies all allegations in paragraph "23" of the Petition.
24. Respondent denies all allegations in paragraph "24" of the Petition.
25. Respondent denies all allegations in paragraph "25" of the Petition.
26. Respondent denies all allegations in paragraph "26" of the Petition.
27. Respondent admits the allegation contained in paragraph "27" of the Petition.
28. Respondent denies all allegations in paragraph "28" of the Petition.
29. Respondent denies all allegations in paragraph "29" of the Petition.
30. Paragraph "30" contains a statement of jurisdiction and legal conclusions to which no response is required.
31. Respondent lacks knowledge or information sufficient to form a response to the allegations set forth in Paragraph "31" of the Petition.
32. Respondent denies all allegations in paragraph "32" of the Petition.
33. Respondent admits the allegations contained in paragraph "33" of the Petition.
34. Respondent denies all allegations in paragraph "34" of the Petition.
35. Respondent denies all allegations in paragraph "35" of the Petition.
36. Respondent denies all allegations in paragraph "36" of the Petition.

IN ANSWER TO THE SECTION TITLED "COUNT II ARTICLE 18 RETURN"

37. Respondent lacks knowledge or information sufficient to form a response to the allegations set forth in Paragraph "37".
38. Paragraph "38" asserts Petitioner's request for relief, which Respondent submits must be denied.

**IN ANSWER TO THE SECTION TITLED “PROVISIONAL AND
EMERGENCY REMEDIES”**

39. Paragraphs “39” assert Petitioner’s requests for Provisional Remedies, which Respondent submits should be denied.

40. Paragraphs “40” assert Petitioner’s requests for Provisional Remedies, which Respondent submits should be denied.

41. Paragraphs “41” assert Petitioner’s requests for Provisional Remedies, which Respondent submits should be denied.

IN ANSWER TO THE SECTION TITLED “UCCJEA DECLARATION”

42. Respondent denies all allegations in paragraph "42" of the Petition.

**IN ANSWER TO THE SECTION TITLED “ATTORNEY’S FEES AND COSTS
INCLUDING TRANSPORTATION EXPENSES PURSUANT TO
CONVENTION ARTICLE 26 AND ICARA 9007”**

43. Respondent denies all allegations in paragraph "43" of the Petition.

44. Respondent denies all allegations in paragraph "44" of the Petition.

IN ANSWER TO THE SECTION TITLED “RELIEF REQUESTED”

Petitioner asserts requests for Relief, which Respondent submits should be denied.

**FOR HIS AFFIRMATIVE DEFENSES, RESPONDENT ALLEGES AS FOLLOWS:
FIRST AFFIRMATIVE DEFENSE**

Petitioner consented to the Child’s retention in the United States.

SECOND AFFIRMATIVE DEFENSE

The Child does not wish to return to Switzerland and is sufficiently mature to express her opinion.

THIRD AFFIRMATIVE DEFENSE

The Child is well-settled with her father in the United States.

RESERVATION OF RIGHTS

Respondent hereby reserves the right to add additional affirmative defenses as may be appropriate during the pendency of this lawsuit.

WHEREFORE, it is requested that the Court dismiss the Petitioner's Petition in its entirety, on the merits, and with prejudice, and award such other relief as the Court may find to be just and equitable.

Dated: New York, New York
July 25, 2023

A handwritten signature in black ink, appearing to read 'Dawud Nelson', written over a horizontal line.

Dawud A. Nelson
Law Offices of Dawud Nelson PLLC
Attorney for Respondent
41 Madison Avenue, 31st Floor
New York, New York 10010
(347) 674-4578

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on July 25, 2023, the foregoing Answer was electronically filed with the Clerk of Court using the ECF electronic filing system, which automatically serves all counsel of record.

Dated: New York, New York
July 25, 2023

A handwritten signature in black ink, appearing to read 'Dawud Nelson', is written over a horizontal line.

Dawud A. Nelson
Law Offices of Dawud Nelson PLLC
Attorney for Respondent
41 Madison Avenue, 31st Floor
New York, New York 10010
(347) 674-4578